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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1974

No. 74-911

BARBARA JONES and
JAMES LOCKE,
Petitioners,

vs.

THE PEOPLE OF THE
STATE OF CALIFORNIA,
Respondent.

PETITION FOR WRIT
OF CERTIORARI

TO THE COURT OF APPEALS OF CALIFORNIA
2ND APPELLATE DISTRICT

LOU PICERNO
LEE A. FREEMAN, EDWARD FREEMAN
Suite 404
5900 Wilshire Blvd.
Los Angeles, CA
(213) 937-2771
(213) 937-2091

Attorneys for Petitioners

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IN THE SUPREME COURT OF THE UNITED STATES

BARBARA JONES and JAMES LOCKE, Petitioners,	)	NO. 24440
vs.	)	PETITION FOR WRIT OF CERTIORARI
THE PEOPLE OF THE STATE OF CALIFORNIA, Respondent.	)	

TO THE SUPREME COURT OF THE STATE OF CALIFORNIA:

The Petitioners, BARBARA JONES and JAMES LOCKE, respectfully pray that a Writ of Certiorari issue to review the judgment and opinion of the Supreme Court of the State of California previously entered on the 30th of October, 1974, denying a hearing on the judgment and opinion of the Court of Appeals of the State of California, Second Appellate District, previously entered on the 6th of September, 1974.

OPINION BELOW

The Supreme Court of the State of California rendered no opinion in its denial of review. The opinion of the Court of Appeal of the State of California, Second Appellate District, Division One, appears in the Appendix hereto.

JURISDICTION

The judgment of the Supreme Court of the State of California, denying Petitioners' request for a hearing on the judgment and opinion of the Court of Appeals of the State of California, Second Appellate District, Division One, was rendered on the 30th of October, 1974. The opinion of the Court of Appeals of the State of California was filed on the 6th of September, 1974, and this Petition for Certiorari was filed within ninety (90) days of the date of the notice of the Supreme Court denying the Petition for Hearing. This Court's jurisdiction is invoked under 28 U.S.C. 1257(3).

QUESTIONS PRESENTED

1. Is the due process clause of the Fifth and Fourteenth Amendments to the Constitution of the United States violated by an inference that a "prohibited narcotic can be possessed" without a showing that the defendant knew of its presence, by presumptions that arise from the contraband being found in a bedroom in which the defendant and another individual slept?

2. Are the due process clauses as above referred to violated by an inference that knowledge of the narcotic nature of the substance can be inferred against one defendant by the fact that narcotics and narcotic paraphernalia are found in the house occupied by five adults?

3. Are the due process clauses above referred to and this Court's holding in Miranda v. Arizona, 384 U.S. 436, violated by a suspect being questioned as to his residence after the suspect identifies himself by giving his name to police officers, and after the police officers have just found contraband at the residence which the suspect is physically at, without first giving the suspect his Miranda warnings?

STATUTORY PROVISIONS INVOLVED

11500.5 Penal Code of the State of California

"Possession for sale of narcotic other than marijuana; punishments; prior convictions. Except as otherwise provided in this provision, every person who possesses for sale any narcotic other than marijuana shall be punished by imprisonment in the state prison for not less than five (5) years, no more than fifteen (15) years and shall not be eligible for release upon completion of sentence or on parole or on any other basis until he has served not less than two and one-half (2-1/2) years in prison....."

STATEMENT OF CASE

Los Angeles Police Officer, MICHAEL A. STRONG, testified that he received information from an unidentified concerned citizen that led him and three fellow officers to the residence of the defendant at 3776 South Dublin Street, Los Angeles, California, to conduct a narcotic investigation. (Cl. Tr. pp 4, L 1-4).

On March 21, 1972, at approximately 6:30 P.M., the officers arrived at the Dublin Street address. Officer Strong knocked on the door and a female voice, who later identified herself as defendant BARBARA JONES, responded, "Who is it?" Officer Strong replied that they were police officers conducting a narcotics investigation and would she open the door. The defendant JONES opened the door and allowed the police officers to enter the house. (Cl. Tr. pp 5, L 16-28; Cl. Tr. pp 5, L 16-28; Cl. Tr. pp 6, L 1-5).

In response to Officer Strong's questioning, the defendant BARBARA JONES stated that she and her husband, JAMES LOCKE, and two sons resided in that home. Officer Strong testified that the two sons were adults, between the ages of 19 years and 22 years old. (Cl. Tr. pp 6, L 7-10).

According to Officer Strong's testimony, he requested permission to conduct a search of the location. The defendant asked if the officers had a search warrant and she was told that they did not. That they were asking her permission to search the premises. The defendant BARBARA JONES then stated: "She didn't know anything about narcotics being sold from the location, and that I could look any place in the location I cared to. Whatever I did was alright with her." (Cl. Tr. pp 6, L 12-23).

Officer Strong began his search in the middle bedroom of the home, which was described as a small bedroom with two

single beds in it. On top of a dresser drawer he found a plastic vial containing red capsules resembling seconal and a box containing some green leafy substance resembling marijuana. In the closet of that same bedroom he found a plastic vial containing an orange balloon which contained a brownish white powder resembling heroin. (Cl. Tr. pp 7, L 1-8).

Officer Strong also thought he recalled a plastic bag on the top dresser drawer of the same bedroom which also contained a substance resembling marijuana. (Cl. Tr. pp 7, L 10-13).

Los Angeles Police Officer JAMES L. WILLIS, testified that he conducted a search of the premises concurrently with Officer Strong directing the scope of his search to the rear bedroom of the home. In that bedroom he found on a dresser located against the west wall a small container containing a crystal white powder which he believed resembled cocaine. In the same bedroom in the closet within a jacket pocket he found two vials, both containing a crystal white powder which he thought resembled cocaine. (Cl. Tr. pp 22, L 1-28).

Officer Strong testified that he also examined the rear bedroom which had been searched by Officer Willis. In the dresser drawer described by Officer Willis, Officer Strong testified that he found both men's and women's clothing, consisting of undergarments, shirts and blouses (Rptr. Tr. pp 50, L 17-28). Officer Strong further testified that there were two clothes closets in the master bedroom, one against

the west wall and one against the south wall. He stated that there were both men's and women's clothing in the closets but couldn't recall whether the closets were separated. "I recall seeing both men's and female's clothes in that bedroom, but I don't remember at this time whether they were both together or not." (Rptr. Tr. pp 52, L 19-28; Rptr. Tr. pp 53, L 1-7).

The house contained three bedrooms. The third bedroom was described as containing a single bed with, he believed, only one closet. The bed was described as a double bed, not a Queen or a King. (Rptr. Tr. pp 53, L 19-25).

The officer thereafter testified that defendant BARBARA JONES told him that she lived there with her husband and two sons and another relative. She then described the middle bedroom as her sons' room. That the front bedroom was occupied by a relative and that the far bedroom or rear bedroom was occupied by herself and her husband. (Rptr. Tr. pp 55, L 3-10).

It was stipulated between the People and Defense Counsel LEE A. FREEMAN, on behalf of the defendants BARBARA JONES and JAMES LOCKE that the items of contraband relevant to the charges against the defendant were as follows:

1. Five grams net weight of plant material containing cannabis sativa or marijuana; brackets located in the middle bedroom of the residence within a dresser drawer. (Cl. Tr., pp 7, L 1-3).

2. Cocaine, .5 grams; located in the rear bedroom on the dresser located against the west wall. (Cl. Tr., pp 22, L 18-21).

3. Cocaine, 7 grams; located in the rear bedroom in a clothes closet in a jacket pocket. (Cl. Tr. pp 22, L 25-27). (Cl. Tr. pp 28, L 22-28; Cl. Tr. pp 29, L 1-3).

The vial containing the 7 grams of cocaine found in the clothes closet in a jacket pocket was described as a brown bottle with a label, with an inscription, shaklee-vite A.E. (Cl. Tr. pp 23, L 25-28; Cl. Tr. pp 24, L 1-4).

REASONS FOR GRANTING THE WRIT

1. The Decision below conflicts with the decision of other Courts of Appeal in the State of California in that People v. Munsen, 255 Cal Ap 2d 689, is a case in which the legal principle and factual situation was in all important aspects the same as the instant case. The Court further stated in that case that the question is whether it can be inferred that the defendant was in constructive possession and knew of the narcotic nature of the substance from the fact that that defendant who evidently lived in the one bedroom apartment together with another defendant, and that the closet in which the contraband was found contained female garments. The Court, in that matter, found that on the basis of those facts the defendant cannot be deemed to be in constructive possession of the contraband. In another

California Appellate case, People v. Antista, 129 C.A.2d 47, the Court again faced the question of constructive possession of a narcotic under factual circumstances which were in their important aspects much the same as the instant case. The Court, in that case, stated:

> "It was necessary for the State to prove either that the marijuana belonged to defendant or had been left in his care by someone else. Guilty knowledge is not presumed. It has to be established by evidence. In a sense it can be said that one has possession of everything that is contained in the home or apartment in which he lives but this is not in a sense which possession is used in the Penal Statute."

The Court further stated in that case:

> ". . . there was insufficient evidence or knowledge on the part of the defendant . . . defendant did not have the burden of establishing lack of knowledge. The burden was on the prosecution to prove the facts from which knowledge could be fairly inferred."

These decisions are in conflict with the decision in the Court of Appeals' opinion, People v. Villa Nueva, 220 Cal. Ap. 2d 443, 33 Cal. Rptr. 811:

> "The finding of narcotics in the room occupied by the accused raises

> a reasonable inference that the illegal drug is his even though he may share the room with another."

The resolution of this conflict in the instant case and the cases cited, and amongst the cases cited and the Villa Nueva case is an important factor in that the question substantially involves the rights of individuals not to be presumed guilty of a crime merely from the fact that one is present at a location where narcotics are found without more.

2. The same conflict in the opinions of the California Courts of Appeal, as referred to in No. 1, is present in the determination of the issue of the proof required to establish the knowledge of the narcotic nature of the contraband. In the case of People v. Tabizon, 166 C.A. 2d 271, the California Court stated:

> "In a prosecution for unlawful possession of narcotics, the People must prove that the forbidden substance was under the dominion and control of the accused, that the accused was aware of its presence, and that he knew the substance was a narcotic."

The mere presence at the scene of the crime standing alone is not sufficient to justify a finding of guilt. This case is in conflict with the ruling of the Court of Appeal in the instant matter, and further in conflict with another Appellate case, Webber v. Superior Court, 106 Cal. Rptr. 593, wherein it was held that "possession justifies an inference of knowledge of narcotic

nature." The importance of resolving this conflict in the law as it is regarding this important issue, is much the same as in the first issue. The resolution of this conflict is important in determining what elements are sufficient to satisfy the due process clauses of the Fifth and Fourteenth Amendments of the United States Constitution as to under what circumstances constructive possession and knowledge can be inferred. The opinion of the Court of Appeals in the instant matter almost states that it is sufficient that there be guilt by association.

The record in the instant case is entirely devoid of any direct evidence establishing that the defendants, BARBARA JONES and JAMES LOCKE, knew of the presence of the contraband or that they were aware of its character as a narcotic. In addition, the record is also devoid of any circumstantial evidence supporting those two elements. Defendants made no evasive or contradictory statements when confronted by the police officers at the door nor at any other time.

None of the circumstances shown to be required in People v. Munson, supra, and People v. Antista, supra., existed which allowed the Court to draw inferences that the defendants knew of the presence of the contraband and of its nature as a narcotic. The Court of Appeal presumes that the State showing that the defendants had dominion and control over the rear bedroom where the contraband was found, that each of the defendants had guilty knowledge of its presence and of its character as a narcotic.

The Court ignored the holding of People v. Munson, supra., where the defendant Munson had no more dominion and control over the contraband than the defendants in the instant case. In each of these cases, contraband was found in a closed closet and bedroom occupied by two persons. Yet the Court in each of these cases reached opposite conclusions.

3. Since this Court's opinion in Miranda v. Arizona, supra., there have been a number of cases determining at what point the constitutional Miranda warnings must be given to satisfy due process. It is universally held that they need not be given when a suspect is merely asked to identify himself. However, it is of the utmost importance that the situation be clarified by the same Court that originally established the Miranda rulings as to how far mere identify information goes. In the instant matter, the way the Trial and Appellate Court viewed the situation by defendant LOCKE stating he lived at the premises, he in fact established all that was necessary for a conviction and without that statement the prosecution did not offer enough evidence to even connect him with the premises. This is all the more true because when defendant JONES stated to the police that she lived at the premises with her husband, JAMES LOCKE, the Trial Court granted defendant LOCK's Motion to exclude that testimony as it applies to him under the ruling of People v. Aranda, 63 Cal. Ap. 2d 518.

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the judgment and opinion of the California Supreme Court and Court of Appeals.

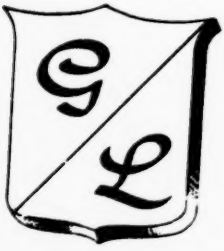
Respectfully submitted,

FREEMAN, FREEMAN,
FREEMAN & HERNAND

By _____
LEE A. FREEMAN and
EDWARD FREEMAN,
Attornies for
Petitioner
JAMES LOCKE

LOU PICERNO AND
EDWARD FREEMAN

By _____
LOU PICERNO, Attorney
for Petitioner
BARBARA JONES



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No. 74-911

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LOU PICERNO
LEE A. FREEMAN, EDWARD S. FREEMAN
Suite 2300
5900 Wilshire Blvd.
Los Angeles, Ca. 90036
(213) 937-2771
(213) 937-3090

Attorneys for Petitioners

APPENDIX

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CITATIONS

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Statutes

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Section 12021 of the Penal Code A-2

IN THE

COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

2d Criminal No. 24440 — Filed Sep. 6, 1974.

(Superior Ct. No. A-282992)

THE PEOPLE,
Plaintiff and Respondent,

v.

BARBARA JONES and
JAMES LOCKE,
Defendants and Appellants.

Appeal from judgments of the Superior Court of Los Angeles County. Michael L. Burke and William R. Clay, Temporary Judges.* Affirmed.

Lou Picerno for Defendant and Appellant Barbara Jones.

Freeman, Freeman & Freeman, and Lee A. Freeman, for Defendant and Appellant James Locke.

* Pursuant to stipulations, see Const., art. VI, Section 21. (See People v. Tijerina (1969) 1 Cal. 3d 41.)

Evelle J. Younger, Attorney General, Jack R. Winkler, Chief Assistant Attorney General, S. Clark Moore, Assistant Attorney General, Laurence Paul Scherb II, and Roy C. Preminger, Deputy Attorneys General, for Plaintiff and Respondent.

- - - - - - - -

Defendants Jones and Locke were accused in count 1 of violating section 11500.5 of the Health and Safety Code (possession of cocaine for sale), and in count 2 of violating section 11530 of said code (possession of marijuana). In count 3 defendant Locke was charged with violating section 12021 of the Penal Code (possession of revolvers by convicted felon). Locke denied allegations of the information that he had been convicted previously of violating section 11500 of the Health and Safety Code. In a nonjury trial, each defendant was found not guilty on "counts 1 and 3" (Jones was not charged in count 3), and guilty of violating section 11500 of the Health and Safety Code, a lesser and included

offense.[1] No determination was made with reference to the alleged prior conviction. Each defendant appeals from the judgment against him (order granting probation), and contends that the evidence does not support the judgment.

The People's case as to each defendant was submitted on the transcript of the preliminary examination.

On March 21, 1972, Officer Strong received information from a citizen who said that she was a neighbor of persons who resided at 3776 Dublin Avenue in Los Angeles; she overheard conversations of those persons that indicated they were involved in the sale of narcotics; they had several expensive cars and did not seem to work; and there was a "lot of activity" at the house —

---

[1] It appears that the court in announcing its findings, and in its minute order as to Locke, mistakenly referred to count 2, rather than count 1, since the lesser and included offense (violation of Health & Saf. Code, section 11500, possession of cocaine) was a lesser and included offense in count 1 (possession of cocaine for sale), and it was not a lesser and included offense in count 2 (possession of marijuana). The minute order as to Jones did not designate a count which included the lesser offense of possession of cocaine.

people arrived there, went inside for a few moments, and left.

About 6:30 p.m. officers Strong and Willis went to the house at 3776 Dublin Avenue. Officer Strong knocked on the door. A female voice said: "Who is it?" The officer replied: "Police officers. We are here to conduct a narcotics investigation. Would you open the door?" Then defendant Jones opened the door and said: "Come on in." The officers entered the house; and Officer Strong requested permission to search the place. She asked whether he had a search warrant, and he said: "No. I don't have a search warrant. I am asking your permission." She said that she did not know anything about narcotics being in the house and that the officer could look any place he cared to look.

He looked in a bedroom and found a plastic vial that contained red capsules resembling seconal, a box that contained a green leafy substance resembling marijuana, and a plastic vial that contained a brownish-white powder resembling heroin. According to Jones, her two sons (ages 19 and 22 years) lived in that bedroom. In the

kitchen, Officer Strong found plastic bags, balloons, milk sugar, and other narcotics paraphernalia. He also found documents bearing the names "James Locke" and "Barbara Jones." In the dresser and in the closets in the master bedroom, Officer Willis saw men's and women's clothing. He also found two vials in the pocket of a jacket in the closet, a bottle on top of the dresser, and $2,539. In his opinion, the material in the bottle and vials was cocaine; and, in his opinion, based upon the amount of cocaine and the paraphernalia found in the house, the cocaine was possessed for sale.[2]

While the officers were in the house, defendant Locke entered the house. Officer Strong asked what his name was; and he replied: "James Locke." He also asked Locke if he lived there; and he replied in the affirmative. The telephone rang; and Officer Willis received consent from Jones or Locke to answer it. He answered the telephone, and a voice said: "Is this James?"

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[2] There was evidence that Officer Willis was qualified as an expert regarding the manner in which narcotics are possessed for sale.

Neither defendant testified at the trial.[3]

Each appellant contends that the evidence does not support the judgment against him (conviction of unlawful possession of cocaine).

"The elements of possession of narcotics are physical or constructive possession thereof coupled with knowledge of the presence and narcotic character of the drug." (People v. Newman, 5 Cal. 3d 48, 52 (95 Cal. Rptr. 12, 484 P. 2d 1356); see People v. White, 71 Cal. 2d 80, 82 (75 Cal. Rptr. 208, 450 P. 2d 600).) Such elements may be established by circumstantial evidence and any reasonable inferences drawn from such evidence. (Id.) It is not necessary that it be shown that an accused had exclusive possession of the narcotics — possession by two

---

[3] At the hearing of the motions to suppress evidence, defendant Jones testified that she and Locke were living in the house; they were not married; when the officers knocked on the door, she saw their guns through the peephole and opened the door because she was afraid; they did not have a search warrant, and she did not consent to a search; and they said that they were going to search anyway. (The People's case was submitted (at hearing of motions) on the transcript of the preliminary examination.) The motions were denied.

or more persons may be joint possession. (People v. Garcia, 4 Cal. App. 3d 904, 910 (84 Cal. Rptr. 624); People v. Peloquin, 270 Cal. App. 2d 610, 612 (75 Cal. Rptr. 898).)

In the present case there was ample evidence that each defendant possessed cocaine. It was found on the dresser and in a jacket in the closet of the master bedroom of the house where they lived.[4] As said in People v. Villanueva, 220 Cal. App. 2d 443, 450 (33 Cal. Rptr. 811), quoting from another case: "'The finding of narcotics in a room occupied by an accused raises a reasonable inference that the illegal drug is his even though he may share the room with another.'" (See, also, People v. Kanos, 14 Cal. App. 3d 642, 653 (92 Cal. Rptr. 614), wherein it was said that "(un)lawful possession may be inferred where narcotics are found in a

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4 Defendant Jones told Officer Strong that she lived there with her "husband," defendant Locke. Locke also said that he lived there. She told the officer that the master bedroom was the bedroom of herself and Locke. (Evidence of that statement was held admissible as to her only.) There was a king-size or queen-size bed in the master bedroom; and men's and women's clothing were found in the dresser and closets therein. The sons used another bedroom.

jacket pocket belonging to the accused or among his personal effects, notwithstanding that someone else may have had the opportunity to deposit the contraband there.")

As to defendant's knowledge of the presence of the cocaine, the bottle of cocaine was in plain view on top of the dresser in the master bedroom, and the vials of cocaine were in the pocket of a jacket in a closet therein. As said in People v. Kanos, supra, p. 653; "Finding narcotics in personal effects is a potent circumstance indicating knowledge of presence, ownership, control, and narcotic nature."

As to defendants' knowledge of the narcotic nature of the cocaine, it was found among personal effects in the master bedroom (see People v. Kanos, supra, p. 653), and other narcotics and narcotics paraphernalia were found in the house occupied by the defendants. (See Weber v. Superior Court, 30 Cal. App. 3d 810, 816 (106 Cal. Rptr. 593).) Also narcotics found in the house were packaged in a manner usually packaged for sale; and $2,539 was found against

a wall in the master bedroom. The evidence supports the judgment against each defendant.[5]

Appellant Locke further contends that the court erred in denying his motion to strike evidence of the statements made by him to the officers when he entered the house. He argues that he was not advised of his rights under Miranda v. Arizona, 384 U.S. 436 (16 L. Ed. 2d 694, 86 S. Ct. 1602), before he made the statements.

As previously stated, while the officers were searching the house pursuant to the consent of Jones, Locke entered the house; and Officer Strong asked his name. Locke stated his name; and the officer asked whether he lived there. Locked replied in the affirmative. Asking the name and address of a suspect is a justifiable type of routine inquiry. (People v. Terry, 2 Cal. 3d 362, 383 (85 Cal. Rptr.

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[5] Respondent asserts that Locke's prior conviction of a narcotics offense gave rise to a further inference that he knew the narcotic nature of the cocaine. (See People v. Ballejos, 216 Cal. App. 2d 286, 292 (30 Cal. Rptr. 725).) It is to be noted, however, that Locke denied the allegations with reference to the prior conviction; and no disposition was made thereof.

409, 466 P. 2d 961).) The above mentioned questions were made while the officers were making an investigation of a neighbor's complaint, and it seems that the questions were the purpose of having defendant identify himself in order to explain his presence in the house, rather than being a process of interrogation directed toward eliciting incriminating statements. The court did not err in denying the motion to strike evidence of Locke's statements.

As indicated in footnote 1, herein, it appears that the trial court, in announcing its findings, and in making a minute order as to Locke, mistakenly referred to count 2 rather than count 1 with respect to the included offense.

The trial court, in announcing its findings, stated: "The court is finding them guilty of the lesser included offense of simple possession of cocaine, violation of Health and Safety Code Section 11500, a lesser included offense in that charge in Count II as to both defendants." (No pronouncement was

made as to counts 1 and 3.) It was count 1 that charged possession of cocaine for sale, not count 2. A lesser offense of possession of cocaine would be included in count 1.

A minute order, dated June 14, 1973, states, as to defendant Jones: "Court finds defendant not guilty counts I and III. Court finds defendant guilty as charged to sect 11500 H & S in count I lesser included offense."

A minute order, dated June 14, 1973, states, as to defendant Locke: "Court finds defendant not guilty counts I and III. Court finds defendant guilty as charged to sect 11500 H & S in count II lesser included offense."

Neither judgment (order granting probation) refers to the findings as to any of the counts.

It appears that in its oral pronouncement of judgment (that each defendant was found guilty of "simple possession of cocaine") that the court intended to state that such offense was a lesser and included offense in count 1, wherein each defendant was charged with unlawful possession of cocaine for sale, and that the

court did not intend to state that such offense was a lesser and included offense in count 2, wherein each defendant was charged with unlawful possession of marijuana.

By nunc pro tunc order made on April 18, 1974, the minutes of June 14, 1973, were ordered corrected as of June 14, 1973, to show that each defendant was found guilty of violation of section 11500 of the Health and Safety Code, a lesser but included offense in that (offense) charged in count 1 of the information. The nunc pro tunc order also stated that Locke was found not guilty on counts 2 and 3, and that Jones was found not guilty on count 2.

The nunc pro tunc order corrected the trial court's error with respect to its reference to numbers designating counts.

The judgments (orders granting probation) are affirmed.

WOOD, P.J.

We concur:

LILLIE, J.

HANSON, J.